

**ORDER GRANTING
INITIAL PROBATIONARY LICENSE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Application of:)	
)	Case No. 1D 2005 64225
)	
Samuel Edward Mieske)	Order Granting Initial Probationary License
)	
)	
<u>Applicant</u>)	

- 1) This 26 year old applicant is a 2004 graduate of California State University of Long Beach in Long Beach, California. The applicant first filed his physical therapist application on or about March 9, 2005 in the State of California.

- 2) In March 2005, the applicant submitted an application for physical therapist licensure to the Physical Therapy Board of California. Question # 18 of the application asks: "Have you ever been convicted of, or pled nolo contendere to any offense in any state in the United States or a foreign country?" Mr. Mieske submitted his application and informed the Board that on or about May 27, 2000 he was arrested and convicted on or about June 23, 2000 for Public Intoxication and Unlawful Dumping. He also submitted that he was arrested February 17, 2001 and convicted on or about March 27, 2001 for Driving Under the Influence of Alcohol and Driving while having a 0.08 or higher blood alcohol. The applicant signed his application on March 9, 2005, certifying under penalty of perjury under the laws of the State of California that the information contained in the application were true and correct.

- 3) On or about February 23, 2005, the California Department of Justice (DOJ) submitted to the Board the results of the applicant's criminal history background check. The DOJ reported that on February 17, 2001, the applicant was arrested in California and charged with "VC-DUI Alcohol/Drugs" and "VC-DUI Alcohol/0.08 Percent". On or about March 30, 2001, Mr. Mieske was convicted of "VC-DUI Alcohol/0.08 Percent" and was sentenced to 36 months probation and a fine.

JURISDICTION

- 4) Section 480 (a) of the Business and Professions Code states that a board may deny a license regulated by this code on the grounds that the applicant has one of the following:
(1) Been convicted of a crime...; (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or (3) Done any act which if done by a licentiate of the business or profession in question,

would be grounds for suspension or revocation of license... Section 480 (c) of the Business and Professions Code provides that the board may deny a license...on the grounds that the applicant knowingly made a false statement of fact required to be revealed in the application for such license. The above findings support a conclusion that grounds for denial exist pursuant to Sections 480 (a)(1)(2) and (3) and 480(c).

5) Section 2660.2 of the Business and Professions Code, the Board may refuse a license to any applicant guilty of unprofessional conduct; or as an alternative, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but has met all the requirements for licensure.

6) Pursuant to Section 480 of the Business and Professions Code, there is cause for denial of a license to applicant Samuel Edward Mieske.

7) Pursuant to Section 2660.2 of the Business and Professions Code, there is cause to refuse a license to applicant Samuel Edward Mieske. Under the circumstances of this matter, however, a probationary license may be issued consistent with the public interest to applicant Samuel Edward Mieske on appropriate terms and conditions of probation.

ORDER

IT IS ORDERED THAT the application of Samuel Edward Mieske for licensure as a physical therapist is hereby issued subject to terms and conditions. Said license shall be subject to all of the following terms and conditions for a period of three (3) years:

1. PROBATION Applicant is placed on probation for a period of (3) years. Probation begins on the date the initial probationary license is issued.
2. OBEY ALL LAWS Applicant shall obey all federal, state and local laws, and all rules governing the practice of physical therapy in California.
3. QUARTERLY REPORTS Applicant shall submit quarterly reports under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of the probation.
4. RESTRICTION OF PRACTICE – PROHIBITION OF SELF EMPLOYMENT OR OWNERSHIP Applicant shall not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. Applicant shall not be a Board member or an officer or have a majority interest in any corporation that offers or provides physical therapy services. Applicant may not employ physical therapist, physical therapist assistants or physical therapy aides.
5. RESTRICTION OF PRACTICE - HOME CARE Applicant shall not provide physical therapy services in a patient's home.
6. RESTRICTION OF PRACTICE – SOLO PRACTICE Applicant shall be prohibited from engaging in the solo practice of physical therapy.
7. RESTRICTION OF PRACTICE - NO EMPLOYMENT OR SUPERVISION OF PHYSICAL THERAPY STUDENT INTERNS Applicant shall not supervise any physical therapy student interns during the entire period of probation.

Applicant shall terminate any such supervisory relationship in existence on the effective date of this probation.

8. COMPLIANCE WITH ORDERS OF A COURT Applicant shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation.
9. COMPLIANCE WITH CRIMINAL PROBATION AND PAYMENT OF RESTITUTION Applicant must not violate any terms and conditions of any criminal probation and must be in compliance with any restitution ordered.
10. PROBATION MONITORING PROGRAM COMPLIANCE Applicant shall comply with the Board's probation monitoring program.
11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Applicant shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.
12. NOTIFICATION OF PROBATIONARY STATUS TO EMPLOYERS The applicant shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the order to the employer. The applicant shall obtain written confirmation from the employer that the document was received. If applicant changes employment or obtains additional employment, applicant shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.
13. NOTIFICATION OF CHANGE OF NAME OR ADDRESS The applicant shall notify the Board, in writing, of any and all changes of name or address within ten (10) days.
14. PROHIBITED USE OF ALIASES Applicant may not use aliases and shall be prohibited from using any name which is not his legally-recognized name or based upon a legal change of name.
15. WORK OF LESS THAN 20 HOURS PER WEEK If the applicant works less than 192 hours in a period of three months in employment related to the provision of physical therapy services, those months shall not be counted toward satisfaction of the probationary period. The applicant shall notify the Board if he works less than 192 hours in a three months period.
16. TOLLING OF PROBATION The period of probation shall run only during the time applicant is practicing within the jurisdiction of California. If, during probation, applicant does not practice within the jurisdiction of California, applicant is required to immediately notify the probationary monitor in writing of the date that applicant's practice is out of state, and the date of return, if any. Practice by the applicant in California prior to notification to the Board of the applicant's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.
17. VIOLATION OF PROBATION If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may revoke probation and the license. If an accusation or petition to revoke probation

is filed against applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

18. CESSATION OF PRACTICE DUE TO RETIREMENT, HEALTH OR OTHER REASONS Following the effective date of this probation, if applicant ceases practicing physical therapy due to retirement, health or other reasons, applicant may request to surrender his license to the Board. The Board reserves the right to evaluate the applicant's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, the applicant makes application for the renewal of the tendered license or makes application for a new license.
19. COMPLETION OF PROBATION Upon successful completion of probation, applicant's license shall be fully restored.
20. PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE ON PROBATION It is not contrary to the public interest for the applicant to practice physical therapy under the probationary conditions specified in the disciplinary order.
21. PROHIBITION OF THE USE OF ALCOHOL Applicant shall abstain completely from the use of alcoholic beverages.
22. BIOLOGICAL FLUID TESTING Applicant shall immediately submit to biological fluid testing, at applicant's cost, upon the request of the Board or its designee.
23. DIVERSION PROGRAM Within 15 days from the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program at respondent's cost until the Board determines that participation in the diversion program is no longer necessary. If the applicant fails to enroll in the Board's Diversion Program within fifteen (15) days of the effective date of this order, the applicant shall be suspended from the practice of physical therapy until such time as the applicant has enrolled in the Board's Diversion Program. Failure to comply with requirements of the Diversion Program, including abstaining from the use of alcohol while a participant in the Diversion Program, terminating the program without permission or being expelled for cause shall constitute a violation of probation by respondent.

THIS DECISION SHALL BECOME EFFECTIVE ON November 1, 2005.

IT IS SO ORDERED September 29, 2005.

Original Signed By:_____
Steven K. Hartzell, Executive Officer
Physical Therapy Board of California